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(iii) Provide for the contracting officer to unilaterally adjust the contract price if the contractor fails to submit the supplemental proposal; and

(iv) Provide that failure of the Government and the contractor to agree to the price adjustment shall be a dispute under the Disputes clause.

[63 FR 55040, Oct. 14, 1998, as amended at 67 FR 49252, July 30, 2002]

215.408 Solicitation provisions and contract clauses.

(1) Use the clause at 252.215-7000, Pricing Adjustments, in solicitations and contracts that contain the clause at—

(i) FAR 52.215-11, Price Reduction for Defective Cost or Pricing Data—Modifications;

(ii) FAR 52.215-12, Subcontractor Cost or Pricing Data; or

(iii) FAR 52.215-13, Subcontractor Cost or Pricing Data—Modifications.

(2) Use the clause at 252.215-7002, Cost Estimating System requirements, in all solicitations and contracts to be award on the basis of cost or pricing data.

215.470 Estimated data prices.

(a) DoD requires estimates of the prices of data in order to evaluate the cost to the Government of data items in terms of their management, product, or engineering value.

(b) When data are required to be delivered under a contract, the solicitation will include DD Form 1423, Contract Data Requirements List. The form and the provision included in the solicitation request the offeror to state what portion of the total price is estimated to be attributable to the production or development of the listed data for the Government (not to the sale of rights in the data). However, offerors' estimated prices may not reflect all such costs; and different offerors may reflect these costs in a different manner, for the following reasons—

(1) Differences in business practices in competitive situations;

(2) Differences in accounting systems among offerors;

(3) Use of factors or rates on some portions of the data;

(4) Application of common effort to two or more data items; and

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(5) differences in data preparation methods among offerors.

(c) Data price estimates should not be used for contract pricing purposes without further analysis.

(d) The contracting officer shall ensure that the contract does not include a requirement for data that the contractor has delivered or is obligated to deliver to the government under another contract or subcontract, and that the successful offeror identifies any such data required by the solicitation. However, where duplicate data are desired, the contract price shall include the costs of duplication, but not of preparation, of such data.

PART 216—TYPES OF CONTRACTS

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36340, July 31, 1991, unless otherwise noted.

Subpart 216.1—Selecting Contract Types

§ 216.104-70 Research and development.

Follow the procedures at PGI 216.104-70 for selecting the appropriate research and development contract type.

[71 FR 39007, July 11, 2006]

Subpart 216.2—Fixed-Price Contracts

216.203 Fixed-price contracts with economic price adjustment.

§ 216.203-4 Contract clauses.

(1) Generally, use the clauses at FAR 52.216-2, Economic Price Adjustment—Standard Supplies, FAR 52.216-3, Economic Price Adjustment—Semistandard Supplies, and FAR 52.216-4, Economic Price Adjustment—Labor and Material, only when—

(i) The total contract price exceeds the simplified acquisition threshold; and

(ii) Delivery or performance will not be completed within 6 months after contract award.

(2) Follow the procedures at PGI 216.203-4 when using an economic price adjustment clause based on cost indexes of labor or material.

[71 FR 39007, July 11, 2006]

216.203-4-70 Additional clauses.

(a) *Price adjustment for basic steel, aluminum, brass, bronze, or copper mill products.* (1) The price adjustment clause at 252.216-7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products, may be used in fixed-price supply contracts

for basic steel, aluminum, brass, bronze, or copper mill products, such as sheets, plates, and bars, when an established catalog or market price exists for the particular product being acquired.

(2) The 10 percent figure in paragraph (d)(1) of the clause shall not be exceeded unless approval is obtained at a level above the contracting officer.

(b) *Price adjustment for nonstandard steel items.* (1) The price adjustment clause at 252.216-7001, Economic Price Adjustment—Nonstandard Steel Items, may be used in fixed-price supply contracts when—

(i) The contractor is a steel producer and actually manufacture the standard steel mill item referred to in the “base steel index” definition of the clause; and

(ii) The items being acquired are nonstandard steel items made wholly or in part of standard steel mill items.

(2) When this clause is included in invitations for bids, omit Note 6 of the clause and all references to Note 6.

(3) Solicitations shall instruct offerors to complete all blanks in accordance with the applicable notes.

(4) When the clause is to provide for adjustment on a basis other than “established price” (see Note 6 of the clause), that price must be verified.

(5) The ten percent figure in paragraph (e)(4) of the clause shall not be exceeded unless approval is obtained at a level above the contracting officer.

(c) *Price adjustment for wage rates or material prices controlled by a foreign government.* (1) The price adjustment clause at 252.216-7003, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government, may be used in fixed-price supply and service contracts when—

(i) The contract is to be performed wholly or in part in a foreign country; and

(ii) A foreign government controls wage rates or material prices and may, during contract performance, impose a mandatory change in wages or prices of material.

(2) Verify the base wage rates and material prices prior to contract award

216.306

and prior to making any adjustment in the contract price.

[56 FR 36340, July 31, 1991, as amended at 62 FR 34122, June 24, 1997; 62 FR 40472, July 29, 1997]

Subpart 216.3—Cost-Reimbursement Contracts

216.306 Cost-plus-fixed-fee contracts.

(c) *Limitations.* (i) Except as provided in paragraph (c)(ii) of this section, annual military construction appropriations acts prohibit the use of cost-plus-fixed-fee contracts that—

(A) Are funded by a military construction appropriations act;

(B) Are estimated to exceed \$25,000; and

(C) Will be performed within the United States, except Alaska.

(ii) The prohibition in paragraph (c)(i) of this section does not apply to contracts specifically approved in writing, setting forth the reasons therefor, in accordance with the following:

(A) The Secretaries of the military departments are authorized to approve such contracts that are for environmental work only, provided the environmental work is not classified as construction, as defined by 10 U.S.C. 2801.

(B) The Secretary of Defense or designee must approve such contracts that are not for environmental work only or are for environmental work classified as construction.

[62 FR 1058, Jan. 8, 1997; 62 FR 1817, Jan. 13, 1997; 62 FR 49305, Sept. 19, 1997; 71 FR 39007, July 11, 2006]

Subpart 216.4—Incentive Contracts

216.402 Application of predetermined, formula-type incentives.

216.402-2 Technical performance incentives.

See PGI 216.402-2 for guidance on establishing performance incentives.

[71 FR 39007, July 11, 2006]

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216.403 Fixed-price incentive contracts.

216.403-2 Fixed-price incentive (successive targets) contracts.

See PGI 216.403-2 for guidance on the use of fixed-price incentive (successive targets) contracts.

[71 FR 39007, July 11, 2006]

216.405 Cost-reimbursement incentive contracts.

216.405-1 Cost-plus-incentive-fee contracts.

See PGI 216.405-1 for guidance on the use of cost-plus-incentive-fee contracts.

[71 FR 39007, July 11, 2006]

216.405-2 Cost-plus-award-fee contracts.

(b) *Application.* The cost-plus-award-fee (CPAF) contract may include provisional award fee payments. A provisional award fee payment is a payment made within an evaluation period prior to a final evaluation for that period. The contracting officer may include provisional award fee payments in a CPAF contract on a case-by-case basis, provided those payments—

(i) Are made no more frequently than monthly;

(ii) Are limited to no more than—

(A) For the initial award fee evaluation period, 50 percent of the award fee available for that period; and

(B) For subsequent award fee evaluation periods, 80 percent of the evaluation score for the prior evaluation period times the award fee available for the current period, e.g., if the contractor received 90 percent of the award fee available for the prior evaluation period, provisional payments for the current period shall not exceed 72 percent (90 percent x 80 percent) of the award fee available for the current period;

(iii) Are superseded by an interim or final award fee evaluation for the applicable evaluation period. If provisional payments have exceeded the payment determined by the evaluation score for the applicable period, the contracting officer shall collect the debt in accordance with FAR 32.606; and

(iv) May be discontinued, or reduced in such amounts deemed appropriate by the contracting officer, when the contracting officer determines that the contractor will not achieve a level of performance commensurate with the provisional payment. The contracting officer shall notify the contractor in writing of any discontinuance or reduction in provisional award fee payments.

(c) *Limitations.*

(i) The CPAF contract shall not be used—

(A) To avoid—

(1) Establishing cost-plus-fixed-fee contracts when the criteria for cost-plus-fixed-fee contracts apply; or

(2) Developing objective targets so a cost-plus-incentive-fee contract can be used; or

(B) For either engineering development or operational system development acquisitions that have specifications suitable for simultaneous research and development and production, except a CPAF contract may be used for individual engineering development or operational system development acquisitions ancillary to the development of a major weapon system or equipment, where—

(1) It is more advantageous; and

(2) The purpose of the acquisition is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(ii) Do not apply the weighted guidelines method to CPAF contracts for either the base (fixed) fee or the award fee.

(iii) The base fee shall not exceed 3 percent of the estimated cost of the contract exclusive of the fee.

(S-70) See PGI 216.405-2 for guidance on the use of CPAF contracts.

[71 FR 39007, July 11, 2006]

216.470 Other applications of award fees.

See PGI 216.470 for guidance on other applications of award fees.

[71 FR 39008, July 11, 2006]

Subpart 216.5—Indefinite-Delivery Contracts

216.501 General.

(a)(i) For items with a shelf-life of less than 6 months, consider the use of indefinite-delivery type contracts with orders to be placed either—

(A) Directly by the users; or

(B) By central purchasing offices with deliveries direct to users.

(ii) Whenever an indefinite-delivery contract is issued, the issuing office must furnish all ordering offices sufficient information for the ordering office to complete its contract reporting responsibilities under 204.670-2. This data must be furnished to the ordering activity in sufficient time for the activity to prepare its report for the action within 3 working days of the order.

[56 FR 36340, July 31, 1991, as amended at 57 FR 42630, Sept. 15, 1992; 63 FR 11529, Mar. 9, 1998]

216.501-1 Definitions.

Multiple award contract, as used in this subpart, means—

(1) A multiple award task order contract entered into in accordance with FAR 16.504(c); or

(2) Any other indefinite-delivery, indefinite-quantity contract that an agency enters into with two or more sources under the same solicitation.

[67 FR 56608, Oct. 25, 2002]

216.501-2 General.

(a) See 217.204(e) for limitations on the period for task order or delivery order contracts awarded by DoD pursuant to 10 U.S.C. 2304a.

[69 FR 13478, Mar. 23, 2004]

216.505 Ordering.

(1) Departments and agencies shall comply with the review, approval, and reporting requirements established in accordance with Subpart 217.78 when placing orders under non-DoD contracts in amounts exceeding the simplified acquisition threshold.

(2) Orders placed under indefinite-delivery contracts may be issued on DD

§ 216.505-70

Form 1155, Order for Supplies or Services.

[63 FR 11529, Mar. 9, 1998, as amended at 70 FR 29642, May 24, 2005; 71 FR 14103, Mar. 21, 2006]

§ 216.505-70 Orders under multiple award contracts.

(a) This subsection—

(1) Implements Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107) for the acquisition of services, and establishes similar policy for the acquisition of supplies;

(2) Applies to orders for supplies or services exceeding \$100,000 placed under multiple award contracts;

(3) Also applies to orders placed by non-DoD agencies on behalf of DoD; and

(4) Does not apply to orders for architect-engineer services, which shall be placed in accordance with the procedures in FAR Subpart 36.6.

(b) Each order exceeding \$100,000 shall be placed on a competitive basis in accordance with paragraph (c) of this subsection, unless this requirement is waived on the basis of a justification that is prepared and approved in accordance with FAR 8.405-6 and includes a written determination that—

(1) A statute expressly authorizes or requires that the purchase be made from a specified source; or

(2) One of the circumstances described at FAR 16.505(b)(2)(i) through (iv) applies to the order. Follow the procedures at PGI 216.505-70 if FAR 16.505(b)(2)(ii) or (iii) is deemed to apply.

(c) An order exceeding \$100,000 is placed on a competitive basis only if the contracting officer—

(1) Provides a fair notice of the intent to make the purchase, including a description of the supplies to be delivered or the services to be performed and the basis upon which the contracting officer will make the selection, to all contractors offering the required supplies or services under the multiple award contract; and

(2) Affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.

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(d) When using the procedures in this subsection—

(1) The contracting officer should keep contractor submission requirements to a minimum;

(2) The contracting officer may use streamlined procedures, including oral presentations;

(3) The competition requirements in FAR part 6 and the policies in FAR Subpart 15.3 do not apply to the ordering process, but the contracting officer shall consider price or cost under each order as one of the factors in the selection decision; and

(4) The contracting officer should consider past performance on earlier orders under the contract, including quality, timeliness, and cost control.

[71 FR 14108, Mar. 21, 2006]

216.506 Solicitation provisions and contract clauses.

(d) If the contract is for the preparation of personal property for shipment or storage (see 247.271-4), substitute paragraph (f) at 252.247-7015, Requirements, for paragraph (f) of the clause at FAR 52.216-21, Requirements.

[63 FR 11529, Mar. 9, 1998]

Subpart 216.6—Time-And-Materials, Labor-Hour, and Letter Contracts

216.603 Letter contracts.

216.603-3 Limitations.

See subpart 217.74 for additional limitations on the use of letter contracts.

216.603-4 Contract clauses.

(b)(2) See 217.7406(a) for additional guidance regarding use of the clause at FAR 52.216-24, Limitation of Government Liability.

(3) Use the clause at 252.217-7027, Contract Definitization, in accordance with its prescription at 217.7406(b), instead of the clause at FAR 52.216-25, Contract Definitization.

[61 FR 7743, Feb. 29, 1996]

Subpart 216.7—Agreements

216.703 Basic ordering agreements.

(c) *Limitations.* The period during which orders may be placed against a basic ordering agreement may not exceed 5 years.

(d) *Orders.* Follow the procedures at PGI 216.703(d) for issuing orders under basic ordering agreements.

[71 FR 39008, July 11, 2006]

PART 217—SPECIAL CONTRACTING METHODS

Subpart 217.1—Multiyear Contracting

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217.171 Multiyear contracts for services.

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Subpart 217.78—Contracts or Delivery Orders Issued by a Non-DoD Agency

217.7800 Scope of subpart.

217.7801 Definitions.

217.7802 Policy.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.